

REMARKS/ARGUMENTS

Applicants have received and carefully reviewed the Final Office Action mailed August 3, 2009 and the Advisory Action of September 30, 2009. Claims 1, 27, 29-33, 40-49, 59, and 60 are currently pending, with claims 29-33 previously withdrawn from consideration. Claims 1, 27, 40-49, 59, and 60 have been rejected. This amendment is being filed along with a Request for Continued Examination. Applicants respectfully traverse all adverse assertions and rejections presented in the above-referenced documents. With this amendment, claims 1 and 40 have been amended, claims 59-60 have been canceled, and new claims 61-62 have been presented. No new material has been added. Favorable consideration of the above amendments and the following remarks is respectfully requested.

Claim Amendments

Without conceding the correctness of the current rejections, and in the interest of advancing prosecution of the present application, certain claim amendments are presented herein. No new matter has been added. The claim amendments find support in the specification, for example, from the last paragraph of page 12 to the third paragraph of page 14, from the second paragraph of page 21 to the second paragraph of page 22, and in the Figures. Favorable consideration is respectfully requested.

Claims 1 and 40 have been amended to further clarify the relationship among certain claimed elements.

New claims 61-62 have been presented and add additional limitations to claim 1.

Claim Rejections – 35 USC § 102

Claim 1 was rejected under 35 U.S.C. §102(b) as anticipated by Hannam et al. (U.S. Patent No. 5,649,959). After careful review, Applicants must respectfully traverse this rejection, particularly in view of the current amendments.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)...“The identical invention must be shown in as complete detail as is contained in

the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (MPEP 2131).

Without conceding the correctness of the rejection, Applicants have amended claim 1 to further clarify the relationship among certain claim elements. Accordingly, Hannam et al. do not appear to disclose “a release mechanism including a hemostatic material having a bottom attached to the top surface near the center of the flexible plug and a resilient extension member attached to a top of the hemostatic material, the resilient extension member having an aperture therein and a suture passing through the aperture to secure the suture to the resilient extension member”, as required by amended claim 1.

Hannam et al. appear to disclose anchor member 30 may have at least one aperture therein through which filament 36 extends, and gelatinous material 52 is injected into an incision above anchor member 30 to form a closure device. Hannam et al. do not appear to disclose a hemostatic material attaching a flexible plug to a resilient extension member having a suture passing through an aperture in the extension member.

Since Hannam et al. do not appear to disclose each and every element of independent claim 1 in as complete detail as is contained in the claim, Hannam et al. cannot anticipate the claim. Withdrawal of the rejection is respectfully requested.

Claim Rejections – 35 USC § 102/103

Claim 27 was rejected under U.S.C. §102(b) as anticipated by Hannam et al. (U.S. Patent No. 5,649,959) or, in the alternative, under 35 U.S.C. §103(a) as obvious over Hannam et al. in view of Haaga (U.S. Patent No. 5,254,105). Applicants respectfully traverse the rejection.

As discussed above, Hannam et al. do not appear to disclose each and every element of independent claim 1, as is required for anticipation. Since claim 27 depends therefrom and adds additional elements thereto, claim 27 also cannot be anticipated by Hannam et al.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

In the alternative, Haaga does not appear to remedy the shortcomings of Hannam

et al. discussed above, with respect to claim 1. Therefore, claim 1 is believed to be patentable over the cited combination. Since claim 27 depends therefrom and adds additional elements thereto, claim 27 is also believed to be patentable over Hannem et al. in view of Haaga. Withdrawal of the rejection is respectfully requested.

Claim Rejections – 35 USC § 103

Claims 40-49 and 59-60 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hannam et al. in view of Kensey et al. (U.S. Patent No. 4,890,612). With this amendment, claims 59-60 have been canceled without prejudice, rendering their rejection moot. After careful review, Applicants must respectfully traverse the rejection of claims 40-49, particularly in view of the current amendments.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03).

In the Final Office Action and the Advisory Action, element 38 (presumably of Hannam et al., but as noted in the response submitted on September 16, 2009, this is not clear in the Final Office Action and the Advisory Action offers no additional clarification) is advanced as coupling flexible plug 30 to hemostatic body 52 by ejecting the hemostatic body “to join the flexible disk in the puncture in order to seal the blood vessel”. Applicants respectfully disagree, as plunger 38 does not appear to actually couple or join the elements together. Instead, plunger 38 appears to push one element into adjacent proximity of the other.

However, without conceding the correctness of the rejection, Applicants have amended claim 40 to further clarify the relationship among certain claim elements. Therefore, Hannam et al. and Kensey et al., alone or in combination, do not appear to disclose or suggest a connector disposed between the flexible disk and the hemostatic body to couple the flexible disk to the hemostatic body, as required by amended claim 40.

For at least the reasons discussed above, Hannam et al. in view of Kensey et al. do not appear to teach all of the claim limitations of independent claim 40, as is required to

establish a *prima facie* case of obviousness. Accordingly, claims 41-49, which depend from claim 40 and add additional elements thereto, are also believed to be nonobvious. Applicants respectfully request that the rejection be withdrawn.

Conclusion


In view of the foregoing, all pending claims are believed to be in condition for allowance. Further examination, reconsideration, and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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